

REMARKS

Status of the Claims

The Office Action Summary states that claims 1, 23, 26, 29-33, and 40-70 are rejected. However, the Office Action itself fails to identify on what grounds each claim is rejected.

For example, in the Reply filed February 26, 2010, new claims 61-70 were added. These claims are now said to be “rejected” for the first time, yet the Office Action itself fails to indicate whether these claims are rejected under 35 USC 112, first paragraph, or rejected for Obviousness-type Double Patenting, or rejected on some other basis. Clarification is requested.

Amendments

Claims 31, 33, and 61-69 are cancelled. Entry of the amendments is respectfully requested. Submission of these amendments is not to be construed as acquiescence to any ground of rejection. Applicants will pursue the subject matter of these claims in a continuation application.

These amendments do not raise any new issues requiring further search and/or consideration, and further place the application in condition for allowance. Entry of the amendments is respectfully requested.

Rejection under 35 USC 112, first paragraph

The Office Action states that the “35 USC 112, 1st paragraph enablement rejection for method of use is maintained.” The rejection does not identify which claims are subject to this rejection.

Prior to the above amendments, the only pending claims that were previously rejected under 35 USC 112, first paragraph, were claims 31 and 33. These claims are now cancelled. All other method of use claims are also cancelled. Thus, the rejection is rendered moot. Withdrawal of the rejection is respectfully requested.

Obviousness-type Double Patenting Rejection in view of SN 11/576,207

The Office Action states that the “obviousness type double patenting rejection over 11/576,207 is maintained because the generic claims remain rejected.” The rejection does not identify which claims are subject to this rejection. In particular, the rejection does not indicate whether this rejection applies to claim 70.

In any event, the assertion that “the generic claims remain rejected” is unclear. The only other rejection presented in the Office Action is an enablement rejection which is only being applied to one or more “method of use” claims, not any generic claim.

Moreover, the enablement rejection is rendered moot by cancellation of all method of use claims. Thus, this provisional rejection is the only remaining rejection and should be withdrawn. As stated in MPEP 804(I)(B)(1):

“If a ‘provisional’ nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer.”

Thus, withdrawal of the rejection and allowance of the application are respectfully requested.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,
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